IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 316 OF 2006.
IN
SUIT NO. 4183 OF 1998.

Smt.Rekha Kumar Shrimankar. ... Plaintiff.
Versus.
1(a) Manjulaben I.Shrimankar & ors. ... Defendants.

Shri R.A.Thorat i/by Shri P.J.Thorat for the Plaintiff.

CORAM : ABHAY S.OKA, J.

DATED : 12th March, 2007.

P.C.:

1. Heard Shri Thorat, Advocate appearing in support of the Notice of Motion. None appears for the Defendants.

2. By this suit the Plaintiff is seeking 1/3rd share in the property described in Exh.A to the plaint. According to the Plaintiff, she has 1/3rd share in the suit property. The suit property is an office premises bearing No.125-A, Mittal Tower, 12th floor, A Wing, Nariman Point, Mumbai.

3. On 23rd September 1998, this Court granted ad-interim relief by passing the following order:

> . "At this stage so far as the question of right of the plaintiff in the property is concerned, ultimately the property stands in

the name of the plaintiff along with defendants Nos.1 and 2. Therefore, so far as that right is concerned, the same is required to be protected in terms of prayer clause (c) by which the defendants, their agents and servants are restrained from selling, alienating, parting with possession or otherwise transferring the suit property or creating any third party rights in respect of the suit property.

. Mr.Madon appearing for the defendants stated that the property has been given to the son of the defendant i.e. Kaushik under leave and licence and that he is running a business centre there. The said Kaushik shall keep and submit accounts in respect of the business. The accounts to be submitted by Kaushik in a sealed cover from the date of the agreement, which Kaushik has entered into with the third party. Accounts to be filed with the Prothonotary & Senior Master, in a sealed cover and shall remain with the Prothonotary & Senior Master till the disposal of the Motion. Accounts to be filed every six months. Mr.Kaushik is permitted to run the business centre which he has been running in the suit

premises. Save and except for this, the defendants are restrained from selling the property or further creating any third party rights."

3. Shri Thorat appearing for the Plaintiff submitted that the said interim order is still operating. However, accounts in terms of the said order are not filed with the Prothonotary & Senior Master. He, therefore, submits that prayer clause (b) of the Notice of Motion deserves to be granted.

4. I have considered the submissions. Even according to the case of the Plaintiff, the Defendants have 2/3rd share in the suit property. While passing the ad-interim order, this Court has granted ad-interim relief in terms of prayer clause (c) and the Defendants were restrained from creating any third party rights in respect of the suit property. This Court noted that the son of the original Defendant No.1 was carrying on business in the suit property. The son of the original Defendant No.1 is now impleaded as party to the Notice of Motion as Defendant No.1(b) after demise of the 1st Defendant. Thus even according to the case of the Plaintiff, a stranger is not in possession of the suit property and the person having undivided share in the suit premises is in possession thereof. In my view

ad-interim relief granted by this Court will have to be continued as interim relief. No case is made out for appointment of Court Receiver as even according to the Plaintiff, the Defendants have 2/3rd share in the suit property. If Defendant No.1(b) has not submitted the accounts as directed by this Court by the earlier order, it is always open for the Plaintiff to take out appropriate proceedings in that behalf.

5. Hence Notice of Motion is made absolute in terms of the ad-interim order dated 23rd September 1998. If Defendant No.1(b) has committed any default by not complying with the directions contained in the said order, it will be open for the Plaintiff to take out appropriate proceedings in that behalf.

Judge.